

ORDINANCE NO. 2296

AN ORDINANCE OF THE CITY OF GARDNER, KANSAS PROVIDING FOR AN ELECTRIC UTILITY BOARD COVERING THE OPERATION, MANAGEMENT AND CONTROL OF SAID ELECTRIC UTILITY FOR THE CITY OF GARDNER, CREATING THE ELECTRIC UTILITY BOARD AND PRESCRIBING ITS POWERS AND DUTIES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

Section 1. Electric Utility Board and Board Members

There is hereby created an Electric Utility Board for the City of Gardner, Kansas, which shall be responsible for the planning, development, production, purchase, transmission, and distribution of all electricity, by the City. Hereafter, the Electric Utility Board will be referred to as the Board.

The Board shall have exclusive jurisdiction, control, and policy making responsibility of the electric utility of the City and all its operations and facilities. The Board shall have all powers and duties possessed by the City to construct, acquire, expand and operate the utility, and to do any and all acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and business-like administration of the utility. The Board shall operate as a division of city government.

Section 2. Organization of the Board

(a) Number of Board Members. The Board shall consist of five members, hereafter referred to as Members.

(b) Appointment and tenure. The Members shall be nominated by the Mayor and confirmed by the City Council. Three of the first Members shall be appointed to serve two year terms and two of the first Members shall be appointed to serve four year terms from the first Monday of the month following the effective date of this ordinance. The term of each will be designated by the Mayor. Their successors shall be appointed for terms of four years, unless they shall be removed from offices as provided in subsection (d) of this section.

(c) Vacancies. Vacancies shall be filled by the Mayor, with the approval of the Council, for the unexpired term. No vacancy on the Board shall impair the right of the remaining Members to exercise all the powers of the Board.

(d) Qualifications. All Members must be residents of the City and customers of the utility. No voting Member may hold any City office or be an employee of the City government or conduct any business with the electric utility. However, membership in professional organizations affiliated with the conduct of utility

operations or participation in or employment at quasi-governmental agencies such as Kansas Municipal Utilities or Kansas Municipal Energy Agency shall not prohibit an individual from serving on the Board.

Should it appear that there is good cause for the removal of any Member because of negligent or willful failure to carry out the duties of office, or because of misprision of office, the City Council shall remove such Member by majority vote, and the Mayor shall appoint a successor, to be confirmed by the City Council.

(e) *Compensation.* Members serve on a volunteer basis and shall not be compensated for their services. Members may be reimbursed for expenses incurred in carrying out their duties.

(f) *Officers.* The Board by majority vote shall elect from among its Members a Chairperson who shall preside over the meetings of the Board, and a Vice-Chairperson who shall act for the Chairperson during absences. The Director or other staff member of the utility shall be responsible for maintenance of records. Election of officers shall be held annually at the first regular meeting of the calendar year. No Member shall serve for more than two consecutive terms as an officer.

(g) *Meetings.* The Board shall hold meetings regularly at least once per month and shall establish a schedule and location for meetings. Special meetings can be held as required following appropriate notice. The Board shall adopt rules for the conduct of its meetings. No action shall be taken by the Board except by the affirmative vote of at least three Members, who shall constitute a quorum.

Meetings and documents of the Board are open and available to the public and subject to the provisions of the Kansas Open Meetings Act.

Section 3. Organization of the Board

(a) *Policy.* The Board shall establish an annual budget and written policies governing utility operations to cover such areas as employees' duties, customer rates, service rules and termination procedures, expenditures of funds, long-range planning, and other appropriate activities.

(b) *Director.* The Board shall appoint, employ and establish the salary of a Director who shall be qualified for the overall management of the utility. The Director shall serve at the pleasure of the Board and shall have such authority as delegated by the Board where it is not in conflict with the ordinance and administrative policies of the City of Gardner. The Director shall have responsibility for all actual construction and repairs, the immediate management of operation of the utility, recommending annual and projected budgets, and the enforcement and execution of all rules and regulations, programs, plans, and decisions made or adopted by the Board. The Director shall maintain required and necessary permanent records regarding actions taken by the Electric Utility

and the Board. The Director shall prepare plans and specifications, take bids, and let contracts, subject to the approval of the Board. The Director shall prepare and submit to the Board periodic reports as required.

(c) Employees of the Electric Utility Board. All employees of the Board shall be City of Gardner employees and entitled to the same right and benefits of the City of Gardner as defined in the City's Personnel Policies and Procedures Manual and amendments thereto. The employees shall be appointed and removed by the Director in consultation with the City of Gardner's Human Resource Manager, who conducts business under the provisions of the City's Personnel Policies and Procedures Manual as well as applicable local, state and federal laws or binding contracts entered into with employees and the Board.

(d) Surety bonds. The Board may require surety bonds for any of the officers and employees of the Board in such amounts as the Board deems necessary. The premiums for the bonds shall be paid by the Board in the same manner as any other operating expense.

Section 4. Powers and Duties of the Board

(a) Real estate and contracts. The Board, in the efficient and economical operation of the electric utility, both inside and outside City limits as state law permits, may: (1) sell its products and services to public and private corporations and to other consumers; (2) construct and operate plants and operate distribution system, transmission lines, and other facilities; (3) purchase real estate and franchises in the name of the City with the approval of the City Council; and (4) enter into all contracts, leases, and agreements in furtherance thereof.

(b) Extensions of services. The Board will adopt regulations governing extensions of its utility service both inside and outside City limits. The regulations shall provide the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the City whether on public or private property. The Board may provide for refunds where advances by the person benefited are necessary to make extensions compensatory.

(c) Expansion of electric service area. As the City annexes new areas into the City Limits, the Board shall conduct a cost-benefit and feasibility analysis to determine if the Board should extend its electric service into the newly annexed area(s). However, for specific economic development purposes, the City Council may restrict areas to be served by a third-party electric provider other than the Board only after reviewing a presentation from the Board regarding the cost-benefits and feasibility of service to the area.

(d) Joint operations with others. The Board may enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the City and State: (1) for the joint use of property belonging either to the authority or to the other contracting party or jointly to both

parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other facilities.

(e) *Eminent domain.* The Board may request the City Council to exercise the right of eminent domain, on the Board's behalf, when the Board determines that public necessity or convenience requires such action.

(f) *Use of thoroughfares for utility installations.* The Board may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway in the operations of the authority, but shall in all cases and subject to the applicable general regulations of the City and State cause the surface of the public way to be restored to its usual condition.

(g) *Rates.* The Board shall establish rates to be charged for electric utility services rendered to its customers. Rates shall be competitive, fair, reasonable, compensatory, and with no undue preference or discrimination. Rates shall also be sufficient for the operations of and the debt service and reserve for the electric utility. The Board may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of the deposits when satisfactory consumer credit has been established.

(h) *Economic Development Incentives.* The Board may also develop and implement economic development incentives.

(i) *Authorization for expenditures.* No money shall be drawn from the funds of the electric utility nor shall any obligation for the expenditure of money be incurred except in conformity with established purchasing policies and procedures and as authorized by the Board and approved by the Director or by some other employee to be designated by the Director.

j) *Use of utility funds.* Subject to existing agreements in place prior to the passage of this ordinance, all electric utility revenues shall be directed to the provision of electric utility services, unless the transfer of revenues constitutes a payment of a traditional franchise tax or payment in lieu of taxes ("PILOT"). The City Council shall establish payment(s) on an annual basis as a part of the City's annual budget process. Any shared utility/City funds or services shall be accounted for directly and explicitly.

(k) *Bond issues and other indebtedness.* That in the event the Board shall deem it necessary and expedient to issue bonds for the construction, extension or improvement of the electric utility, the Board may make written request to the City Council for the issuance of bonds subject to all applicable laws. The City Council shall consider taking necessary action subject to all applicable laws for the issuance of bonds in such amount as requested by the Board.

(l) Accounting, finance, budget and planning reports. The Board, in addition to the reports and accounting it may otherwise be required by law to make, shall furnish to the City Council its annual financial report prepared according to generally accepted accounting principles. The funds and accounts of the Board shall be audited annually by the auditor chosen by the Council, and shall be open to public inspection. The Board shall also annually approve a five year budget forecast and furnish a copy to the Mayor and the Council. The Board may also submit to the City Council information concerning long-range power supply arrangements, capital improvement projects, and other programs that may have an impact on the City.

(m) Delegation of powers. While the Board must retain certain powers to itself, but it may delegate in writing other powers to the Director or other employees responsible to it, as necessary.

Section 5. General Provisions

(a) Disposition of Electric Utility. The City Council shall have the authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of the Board and or the electric utility.

(b) Joint operations with the City. The Board and the City Council may enter into agreements with each other to perform services on behalf of the other or to share services and resources. It cannot terminate service with the City without approval of the City Council, for example utility billing services, as it may result in undo harm to the City.

(c) Existing obligations. Contracts and obligations relating to the electric utility of the City incurred prior to the effective date of this ordinance shall not be impaired and shall be binding upon the Board insofar as they apply to the authority.

(d) Repeal of prior ordinances and resolutions. All ordinances and resolutions and parts thereof that are inconsistent with any provision of this ordinance are hereby repealed. Ordinances and resolutions that establish operational policies and procedures and rates and specifications pertaining to the electric utility will remain in effect until such time as the Board shall approve changes thereto.

(e) Separability of provisions. The sections and subsections of this Ordinance are declared to be separable, and in the event any one or more sections, subsections, or parts thereof be declared unconstitutional, it shall not affect the validity of other provisions of this Ordinance.

Section 6. Effective Date of Ordinance

This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY, this 17th day of November, 2008.

/s/ Carol Lehman
Carol Lehman, Mayor

(SEAL)

ATTEST:

/s/ Teresa Anderson
Teresa Anderson, City Clerk